

(1963) 01 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1519 of 1961

Jagatjit Distilling and Allied Industries Ltd. Jagatjit Nagar	APPELLANT
Vs	
Deputy Custodian General, India and Others	RESPONDENT

Date of Decision : 04-01-1963

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 27, 7, 7(1), 7A, 8(2A)
Pepsu Administration of Evacuee Property Ordinance, 2006 — Section 5

Citation : AIR 1963 P&H 494

Hon'ble Judges : Mehar Singh, J;A.N. Grover, J

Bench : Division Bench

Advocate : B.R. Tuli, for the Appellant; A.M. Suri, for the Respondent

Final Decision : Dismissed

Judgement

Grover, J.—In this petition under Article 226 of the Constitution, certain orders made by the Deputy Custodian-General have been challenged. They were made in connection with the transfer of certain property to the petitioner company by the Custodian of Evacuee Property under the provisions contained in the Kapurthala State Evacuees (Administration or Property) Act, 1948. A number of points have been raised in the petition and were argued before me by Mr. B. R. Tuli, the learned counsel for the petitioner, but one of the material points on the decision of which the fate of this petition may ultimately depend is whether the property in dispute could be declared to be evacuee property by the Deputy Custodian-General after 7th May 1954 owing to the prohibition contained in Section 7A of the Administration of Evacuee Property Act, 1950.

The position taken up on behalf of the respondents is that since the property in question was evacuee property, it vested automatically in the Custodian under the provisions contained in the Kapurthala State Evacuees (Administration of Property) Act, 1948, and that vesting continued under the provisions of Section 8(2) of the Administration of Evacuee Property Act, 1950. Mr. Tuli, however has placed reliance on a decision given by me in Darshan Lal Vs. R.L. Aggarwal and

Others, I had come to the conclusion that the provisions contained in Sections 7 and 1 of the Administration of Evacuee Property Act must be followed before 8 property could be declared to be an evacuee property or deemed to have been so declared, and that it was only when property had been declared to be evacuee property in accordance with the statute that it could be deemed to have vested in the Custodian. For the purpose of vesting, there must be something tangible and objective which the Custodian Department should have done, e.g., assumption of physical control, specification of a particular property as evacuee property, assumption of control by express notification and the like. Section 8(2) would have retrospective effect only in such cases in which some positive action had been taken under the relevant provisions or some effective decision had been given; otherwise the provisions of the Act were to apply and there would be no vesting unless a notice u/s 7 has been issued and a declaration has been made.

Tek Chand J. in *Sham Singh v. Custodian-General etc.* 1961 PLR 420 has dissented from my decision and the learned Additional Advocate-General has now relied mainly on that decision. Mr. Tuli's position is that Section 8(2) would not apply to his case but the Additional Advocate-General maintains that it will. Therefore, it is essential to resolve the conflict between the two views which had been taken in this Court.

In *Jai Kaur and Others Vs. Sher Singh and Others*, their Lordships of the Supreme Court made certain observations at page 626 (of 1LR Punj): (at pp. 1122-1123 of AIR) which are pertinent-

"We had recently occasion to disapprove of the action of a Division Bench in another High Court in taxing it upon themselves to hold that a contrary decision of another Division Bench on a question of law was erroneous and stressed the importance of the well-recognised judicial practice that when a Division Bench differs from a previous decision of another Division Bench the matter should be referred to a larger Bench for final decision."

Although these observations were made with regard to decisions of Division Benches, with great respect I consider that the ratio would apply even to decisions of Single Benches. At any rate, in my opinion it would create a good deal of difficulty for the subordinate Courts if conflicting decisions are given by Single Judges. I would accordingly direct that the orders of the Hon^{ble} the Chief Justice may be obtained for constituting a Division Bench for deciding this petition.

2. Mr. Tuli has pointed out that the Additional Custodian has now assessed the value of the property at about Rs. 92,000/- and that objections have been preferred by him to that but sooner or later the Department will call upon him to pay the difference between this amount and the amount which he had already paid at the time of the transfer. It is prayed that pending the decision of the Division Bench realisation of any extra amount that may be determined by the

Department as payable by the petitioner company should be stayed. I consider it is a reasonable prayer and I grant the same.

ORDER

Grover, J.

3. This petition under Article 226 of the Constitution was referred by me for decision by a Division Bench and in order to decide the points raised in it, it will be necessary to set out the facts.

4. The petitioner which is a Limited Company entered into negotiations with the erstwhile Kapurthala state for establishing a distillery at Hamira (later on named as Jagarjit Nagar). It is alleged that the Company was able to obtain certain concessions from the Government of the State, one of which was that 100 acres of land would be acquired and transferred to the Company on half the price of acquisition. This as also the other concessions are stated to have been embodied in some letters exchanged between the parties but ultimately an agreement was entered into on 18th April 1948. It was stated in the agreement (Annexure "A") that the concessions and facilities had been approved by His Highness the Maharaja. It was further recited therein that 47 acres had already been acquired and handed over to the Company as against a sum of Rs. 23,925/15/- and 53 acres more remained to be acquired and handed over to the Company.

In July/August 1948 pursuant to the order of the Chief Minister of the State dated 22nd July 1948, 53 acres of land which by that time had become evacuee property are said to have been transferred to the Company for which a sum of Rs. 39,356/11/6 was paid on 13th August 1948. The price was assessed by the Custodian of Evacuee Property at Rs. 52,476/- and the Company was required to pay three-fourths (instead of one-half) of this price. According to paragraph 3 of the petition, the Company made a representation that it was liable to pay only one-half of the price in terms of the agreement and asked for a refund of Rs. 13,119/- out of the amount of Rs. 39,356/11/6. On 30th April 1953 the Authorised Deputy Custodian (Judicial) of Evacuee Property, Pepsu, served the Company with a notice u/s 7(1) of the Administration of Evacuee Property Act, 1950 (to be called the Act) calling upon the Company to show cause why 53 acres of land be not declared as (sic) property. The Company defended the above proceedings and gave evidence in support of its claim that the aforesaid land had been transferred in its favour in 1948. On 9th November 1953 the Deputy Custodian (Judicial) discharged the notice and held that the said land had already vested in the Company under orders of the Government and the Custodian and no appeal or revision against that order had been filed, with the result that the transfer had become final (vide Annexure "C"). The mutations which had been made in favour of the Company were sought to be reviewed under the order of the Collector, Kapurthala, dated 7th May 1958, the suggestion in the petition being that that was done under the orders of the Financial Commissioner. The Company as also Shri L. P. Jaiswal filed a writ petition in this Court on 30th May

1958 (Civil Writ No. 434 of 1958) challenging the proceedings taken by the Collector. That petition came up for hearing before Shamsheer Bahadur J. on 25th May 1959 when it was stated that the Custodian-General had been moved to revise the orders of the Deputy Custodian (Judicial) and that the writ petition might not be heard till the decision by the Deputy Custodian-General. Shamsheer Bahadur J. acceded to that request. On 13th July 1959 the Company received a notice from the Custodian-General in the matter of ascertaining whether there were any valid grounds for setting aside the order dated 9th November, 1953 passed by the Deputy Custodian (Judicial). The company raised various preliminary objections to any proceedings by way of revision or review by the Deputy Custodian-General *sue motu*. These were rejected on 20th February 1960, The Company thereupon filed another petition in this Court (Civil Writ No. 539 of 1960) Impugning the order made on 29th February 1960 by the Deputy Custodian-General. On 28th April 1960 a Bench of this Court dismissed that petition as premature on the ground that the matter had yet to be finally decided by the Deputy Custodian-General. It appears that the case was argued at great length and on 9th October 1961 the Deputy Custodian-General made an order against the Company holding that the property had not been properly transferred to the Company under the orders of the Custodian and the state Government and that the price paid was not adequate. It was directed that the Additional Custodian should enquire into the proper value of the land in "question and in case the deficiency in price was made up within the time prescribed by the Additional Custodian, the transfer of the disputed land would be considered to be valid but in the event of default the order of the Deputy Custodian (Judicial) would be set aside. By means of the present petition, the orders made by the Deputy Custodian-General on 29th February 1960 and 9th October 1961 are sought to be quashed.

5. The first question that has to be determined and which arises out of the order of the Deputy Custodian-General dated 29th February 1960 is whether the land in dispute had ever been declared to be evacuee property in accordance with law. If it was not evacuee property, then admittedly the Deputy Custodian-General would have no jurisdiction to make any orders in respect of it and the same would have to be set aside.

The position taken up on behalf of the Company is two fold:--

1. As the land had been transferred in favour of the Company validly and properly in the year 1948 pursuant to the agreement entered into on 18th April 1948, it could not be regarded as evacuee property under the relevant evacuee laws or the Act.

2. The said land never vested in the Custodian and it was for the first time under the Act that proceedings were taken by the Deputy Custodian (Judicial) in the year 1953 when it was found that the land was not evacuee property. No appeal or revision was filed against that decision, with the result that it became final. By virtue of the introduction of Section 7A in the Act in the year 1954 no property

could be declared evacuee after 7th May 1954. The Deputy-Custodian-General, therefore, had no power or jurisdiction to reverse the decision of the Deputy Custodian (Judicial) and treat the land as evacuee property after the aforesaid date.

6. It is necessary at this stage to set out in their proper sequence the various laws relating to evacuee property which were promulgated from time to time and which are relevant for deciding the above questions.

A notification dated 8th September 1947 (Annexure "J") issued by the erstwhile Kapurthala Government is in the following words:--

"By command of His Highness the Maharaja of Kapurthala it is hereby ordered that all property movable and immovable of the Muslim evacuees shall vest in the Government of His Highness the Maharaja and shall be deemed and treated as State property for all purposes until further orders, All alienations made by Muslims on or after the 15th of August 1947, are hereby declared void and the property shall be treated as above."

This was followed by the Kapurthala State Evacuees". (Administration of Property) Act, 1948, published in the Kapurthala Akhbar dated 3rd April 1948. Section 4 of that Act provided that all evacuee property situated within the State was to vest in the Custodian for the purposes of that Act and was to continue to be so vested until His Highness's Government by notification otherwise directed.

Section 6 dealt with the manner in which the Custodian was to take possession of the evacuee property vesting in him under that Act. He was to comply with the following provisions;--

(a) Publish in the locality a notice specifying the property of which he intended to take possession.

(b) Where property was occupied by any person, he was to be given a notice in writing requiring him to vacate the property and if that person laid a claim to continue to remain in possession, the Custodian was to hold a summary enquiry and determine the Claim. * * *

Section 7 dealt with enquiry into claims to evacuee property and Section 9 with powers of the Custodian in regard to management. Clause (vii) of Section 9(2) empowered the Custodian to transfer by way of sale or mortgage etc. any property of the evacuee provided that he was not to sell any immovable property without obtaining the orders of His Highness's Government.

On 20th August 1948 when the Patiala and East Punjab States Union (to be referred to as the Pepsu) was formed, the Pepsu Administration Ordinance No. 1 of 2005 Bk. was enacted which was later on repealed by the Pepsu General Provisions (Administration) Ordinance No. XVI of 2005BK. The result of the enactment of this Ordinance was that from the appointed day all laws etc. in Patiala State were to apply mutatis mutandis to the territories of the Union and

all laws in force in the other-Covenanting states immediately before that day ceased to have effect. The appointed day meant the 5th day of Bhadon, 200Bk. Thus after the formation of Pepsu, the evacuee laws which prevailed in the erstwhile Patiala State were to govern evacuee, properties in" the erst while Kapurthala State as well. -

The Pepsu Evacuees (Administration of property) ordinance No. XIII of 2006 Bk. contained Section 4, according to which all evacuee property situate within the Union was to vest In the Custodian for the purpose of the Ordinance and was to continue to so vest until it was returned to the owner in accordance with the provisions of Section 17. Section 8 prohibited sale or transfer of evacuee property after 15th August 1947 and it could not be effective unless it was confirmed by the Custodian. Section 9 provided for taking possession of evacuee property and it was provided that the Custodian, by general or special order, with reference to the location or description of a specific or any class OT evacuee property, could assume possession of or control over it which had to be published in the Official Gazette from the date of the order. The holder of such property was to be deemed as holding it on behalf of the Custodian. Section 10 related to enquiry into claims to evacuee property and Section 13 to powers of the custodian in regard to management.

This Ordinance was repealed by the Pepsu Administration of Evacuee Property Ordinance No. XVII of 20066k. in which Section 5 provided that subject to the provisions of that Ordinance, all evacuee property in the union was to vest in the Custodian. Sub-section 12) laid down that where immediately before the commencement of that Ordinance any evacuee property in the Union had vested in the Custodian under any corresponding law in force immediately before such commencement the evacuee property was to be deemed to have vested In the Custodian appointed for the Union under that Ordinance.

Section 6 of Ordinance XVII was in the following terms:--

"6(1) The Custodian may, from time to time; notify, either by publication in the official Gazette or in such other manner as may be prescribed, evacuee properties which have vested in him under this Ordinance.

(2) Where, after the vesting of any evacuee property in the Custodian, any person is in possession of any such property, fie shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the custodian or any other person duly authorised by him in this behalf."

The provisiona of the other sections were almost/similar to those contained in the previous Ordinance,

Thereafter the Central Administration of Evacuee Property Ordinance No XXVII of 1949 was enabled. Section a which related to vesting was as follows:--

"8. (1) Any property declared to be evacuee property finder Section 7 shall vest in the Custodian.

(2) Where immediately before the commencement of this Ordinance any evacuee property in a Province had vested in any "person exercising the powers" of a Custodian" under any law repealed". hereby, the evacuee property, shall, on the commencement of the Ordinance, be deemed to have vested in the Custodian appointed or deemed to have been appointed for the Province under this Ordinance, and shall continue to so vest.

This was followed by the Act which contained similar provisions. Sub-section (2A) was inserted in Section 8 of the Act with retrospective effect by Central Act of 1960. This sub-section may be reproduced-

""Without prejudice to the generality of the provisions contained in Sub-section, (2), all property which under any law repealed hereby purports to have, vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the invalidity of such law or any judgment, decree or order of any court, be deemed for all purposes, to have validly vested in that person as if the provisions of such law had been enacted by Parliament and such property" shall, on, the commencement, of this Act, be deemed to have been evacuee property declared as such within the meaning of the Act and accordingly, any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken."

It will be useful to, refer to Section 7A also of the Act which provided that no property was to be declared to be evacuee property on or, after the 7th day of May 1954 by this was riot to apply to any property in respect of which proceedings were pending, on the 7th day of May 1954 or declaring such property as evacuee property.

7. Mr. Bal Raj Tuli for the petitioner contends that by virtue of the notification dated 8th September 1947 the entire evacuee property, by Command of His Highness the Bahsraja who, was a Sovereign Ruler of the State, vested in his Government and, it, was open to that Government to transfer or sell any such property and that the land measuring 53 acres was actually so transferred or sold to the petitioner. It is submitted that even though the Kapurthala State Evacuees (Administration of Property) Act,, 1948,-had come into force by the time the transfer was made but as recited in the agreement dated 18th April 1948, it had already been settled that this land was to be transferred to the petitioner and, therefore, there could be no doubt that the sale or transfer was perfectly valid. He further, says that, the Custodian never took any steps which were necessary under the aforesaid Act of 1948 which would have had the effect of vesting the same in him.

Alternatively, Mr. Tuli urges that even if it be assumed for the sake of argument that the property had vested in the Custodian u/s 4, it was the Custodian who had assessed the price which meant that he was in substance and effect a party to the transfer which was effected under the orders "of the Chief- Minister of the

State dated 22nd July 1948. The Deputy Custodian (Judicial) In his order of 9th November 1953 dealt with this matter as follows:

"My attention is drawn towards the letter of the Custodian dated 1st June, 1948, Exhibit, D-15, and three letters of the Chief Master dated 22nd July 1948, 3rd August, 1948 and 14th May 1948, Exhibits, D-16, D-17 and D-18" respectively. These letters clearly show that the transfer of the land to the respondent was "made by, the Government as well as the Custodian of Evacuee property. Sanction from no other quarters was necessary under the evacuee law then in force."

The Deputy Custodian-General has recorded a fairly lengthy order but unfortunately it is not as well written as might have been expected and the contentions of the parties are reproduced in extenso without, the decision of the various points argued having been dealt with in a clear and cogent manner. It had been argued before him on behalf of the Department that the transfer of the land in question was not covered by the general terms of that agreement entered into between, the, parties and required the specific approval of the Council of His Highness. The Deputy Custodian-General noticed that as the land had become evacuee property, it could be transferred, only under the Kapurthala State Act of 1948 which required transfer to be made by the Custodian under the order of His Highness's Government. There were no specific orders for its transfer. After finding that the price which had been assessed at the time when the alleged transfer was made, was definitely on the low side, he proceeded to say as follows:

"As a result of the above discussion, it would appear that the learned Deputy Custodian. was not justified in assuming that the property had been properly transferred to the respondent under the orders of the Custodian and the State Government, particularly when the price paid was not adequate." .

Mr. Tuli has strenuously contended that apart from the unsatisfactory manner in which the Deputy Custodian-General dealt with the whole matter, there are at least two apparent errors from which his order suffers. The first is that the Deputy Custodian-General was: of the view that there was no authentic proof of the notification dated 8th September 1947 and the second is that he allowed his mind to be influenced by the question of inadequacy of price which is wholly irrelevant for the purpose of deciding whether as a matter of fact a transfer or sale in favour of the petitioner was effected of the land in dispute in the year 1948. "In support of the proof of the notification, its copy duly attested, by the proper Department of the Government was produced and it is not possible to agree with the Deputy Custodian-General that there is no authentic proof of this notification nor is he right in taking into consideration the question of "adequacy of the price while determining the question of sale or transfer. At the same time the fact cannot be ignored that the petitioner did not produce any orders of His Highness or his Government or of the Custodian with regard to the transfer of the land. Even if, by virtue of the notification dated 8th September 1947, all

evacuee property in the State had become its property but that was so only till further orders. The Kapurthala State Act of 1948 dealt with the subject of evacuee property and by virtue of its provisions if it came to vest In the Custodian It could only be sold or transferred by him after taking the approval of His Highness's Government. As no such proof was forthcoming on the record of the case,; the Deputy Custodian-General could properly come to the conclusion that no sale or transfer had been established in accordance with law which prevailed In the erstwhile Kapurthala State at the material time. Thus inspite of certain infirmities in the order of the Deputy Custodian-General the petitioner cannot succeed on the first point.

8. The second question is whether the land should be deemed to have automatically vested in the Custodian in the year 1948 and continued to vest later on so as to give jurisdiction to the Custodian Department to make orders with regard to it. As there was no saving clause in the Pepsu Ordinance Ho. 1 of 2005 Bk. with regard to the laws in force in the erstwhile Kapurthala state, the provisions of the Kapurthala State Act of 1948 would not be relevant in the matter. It is to the Pepsu Ordinance No. 13 of 2006 Bk. that one has to turn for the purpose of finding out whether the land in dispute vested in the Custodian. Its provisions have already been noticed as also of the subsequent Ordinance No. XVII. If the land had vested tinder these Ordinances in the Custodian, then that vesting was to continue under the provisions of the Central Ordinance No. XXVII of 1949 and the Act. The argument of Mr. Tuli is that the land was never declared to be evacuee property under either of the aforesaid Ordinances or the Act and, therefore it could not vest in the Custodian, He has also relied on my judgment in Darshan Lal Vs. R.L. Aggarwal and Others, in which I followed mostly the view of Weston C. J. in Custodian, Evacuee Property, Punjab Vs. Gujar Singh and Others, for holding that lor the purpose of vesting there must be something tangible and objective which the Custodian Department should have done, e.g., assumption of physical control, specification of a particular property as evacuee property, assumption of control by express notification and the like. A mere general notification or proclamation in which no particular property or properties were specified could not have the effect of vesting a particular property in the Custodian. This view was dissented from by Tek Chand J. in 1981 PLR 42. Mr. A. M. Suri, who appears for the respondents, has invited our attention to a recent decision of the Supreme court in Azimunissa and Others Vs. The Deputy Custodian, Evacuee Properties, District Deoria and Others, which, according to him has settled the law on the subject. In that case the main provision which came up for consideration was Sub-section 2A of Section 8 of the Act and it has been held that the effect of this provision is to give retrospective effect to validate what purports to be vested and remove all defects or invalidity in the vesting or fictional vesting u/s 8(2) of the Ordinance XXVII of 1949 or Section 8(2) of the Act which repealed the Ordinance; * * *.At page 368 their Lordships made the following observations:--

"The property in dispute is situate in what was the United Provinces and the first

legislation in that province as it then was, was the United provinces Administration of Evacuee Property Ordinance, 1949 (U. P. Ordinance No. 1 of 1949), which was promulgated on June 24, 1949. in this "Ordinance evacuee and evacuee property had the definition which has been continued in the later Ordinances and Acts. By Section 5 of that Ordinance all evacuee property situate in the United Provinces automatically vested in the Custodian and any person in possession of such property was deemed to be holding on behalf of the Custodian (Section 6(2)). As Khatoon Bibi was an evacuee u/s 2(c) of the U.P. Ordinance, her property automatically vested in the Custodian u/s 5."

Section 5 of U. P. Ordinance No. I laid down "all evacuee property" situate in the. United Provinces shall vest in the Custodian" and Section 6 provided the Custodian may, from time to time, notify by publication in the official Gazette * * * evacuee properties which have vested in him". It required any person in possession of any evacuee property after the vesting of it in the Custodian to surrender possession on receipt of a notice from him. Any person who claimed any right to, or interest in, the property notified or required to be handed over, to the Custodian could prefer a claim to the Custodian on the ground that the property was not evacuee property on which the Custodian was to hold a summary enquiry and dispose of the claim.

The appeal which was being decided by their Lo(sic) was directed against a judgment of the Allahabad High Court reported in Azizun Nisa and Others Vs. Asst. Custodian and Others, . Desai, J., who delivered the judgment of that Court, had observed at page 565 that a r(sic) feature of the Ordinance was that the property of an evacuee vested automatically in the Custodian and that no declaration that the owner had become an evacuee was required at all and even a notification that the property had vested in the Custodian was not mandatory; a notice was mandatory only if the Custodian required possession to be surrendered to him by the person in actual occupation. In that case also, no action had been taken by the custodian under that Ordinance; no notice was published regarding any property of the alleged evacuees having vested in the Custodian nor had he issued any notice to the persons in possession to surrender possession to him.

Mr. Suri submits that their Lordships while making the above observations accepted the position that by virtue of Section 5 of the U.P. Ordinance, all evacuee property automatically vested in the Custodian without anything more having been done in the matter of taking possession or making of a notification specifying the property. Although this matter was not directly before their Lordships and I have some difficulty in accepting that their Lordships were laying down in the aforesaid observations the law on this question it appears more plausible that the theory of what may be called automatic vesting has received the imprimatur of the Supreme Court, with the result that by virtue of the provisions contained in the Pepsu Ordinances and Central Ordinance XXVII of 1949 as also the Act the land in dispute vested and continued to vest in the

Custodian, although until 1953 no steps were taken of the nature provided in the Ordinances with regard to notification or specification of such properties as had vested in the Custodian.

Mr. Tuli sought to draw a distinction between the provisions of U. P. Ordinance 1 of 1949 and the Pepsu Ordinance XVII of 2006 Bk. by showing that in the U. P. Ordinance any person in possession of the evacuee property was to hold it on behalf of the Custodian as soon as it vested in him by virtue of the provisions of the Ordinance but in the Pepsu Ordinance XVII of 2006 Bk. by virtue of Section 8 the Custodian was to notify from time to time either by publication in the official Gazette or in such manner as might be prescribed evacuee properties which had vested in him under the Ordinance and any person in possession of such property would be deemed to be holding it under the Custodian. The suggestion is that it is only after the property had been notified as evacuee property that the person in possession was to be deemed to be holding it on behalf of the Custodian. As has been stated before, Section 6 of the U. P. Ordinance also provided for a notification to be issued of the same nature as contemplated by Section 6 of Ordinance XVII.

Mr. Suri has submitted that vesting of evacuee property in the Custodian is not dependent on any other act on the part of the Custodian as it is automatic by virtue of the provisions contained in the Ordinances and the statutes.

As their Lordships in the judgment, referred to before, appeared to have accepted this position, it must be held that the land in question which admittedly belonged to Muslim evacuees vested in the Custodian under the Pepsu Ordinance XVII of 2006 Bk. and by virtue of the subsequent laws it continued to vest in the Custodian. In this view of the matter the mere fact that in 1953 the Deputy Custodian (Judicial) issued a notice u/s 7(1) of the Act for the first time will not have the effect of showing that the property had never vested in him.

9. As regards the effect of the new Section 7A of the Act which was inserted in 1954, Mr. Tuli has contended that a general and total bar was created with regard to declaring any property to be evacuee on or after the 7th May 1954 and as the Deputy Custodian (Judicial) had decided in 1953 that it was not evacuee property, the Deputy Custodian-General could not make a declaration to the contrary. It is pointed out that there were no proceedings which were pending on the 7th May 1954 for declaring the land in dispute to be evacuee property and for that reason the Deputy Custodian-General could not derive power from proviso (a) to Section 7A of the Act.

It is true that the Deputy Custodian-General initiated proceedings suo motu on the revisional side and it could not be said that there were any proceedings pending on 7th May 1954 for declaring the land to be evacuee property, but Section 7A could possibly have no application to the present case. As it has been held that the land had vested in the Custodian as evacuee property, it continued to have that character until the Deputy Custodian (Judicial) held that since it had

been transferred in accordance with the relevant evacuee laws to the petitioner it had ceased to be evacuee property. No fresh declaration or proceedings were being initiated for declaring it to be evacuee and all that the Deputy Custodian-General had to decide on the revisional side was whether the order made by the Deputy Custodian (Judicial) was legal or proper. Once the finding with regard to transfer or sale in favour of the petitioner was set aside, the land had to be treated as evacuee property but by so doing the Deputy Custodian-General was not making any order contrary to Section 7A. He was only deciding that the sale or transfer was not valid, with the result that the order of the Deputy Custodian (Judicial) releasing the property stood reversed.

10. Mr. Tuli next contended that the Deputy Custodian-General was not justified in revising or reviewing the order of the Deputy Custodian (Judicial) in exercise of revisional powers after a lapse of a number of years. It is submitted that the words "at any time" in Section 27 of the Act, which confers powers on the Custodian-General, must be construed as meaning within a reasonable time and no such powers could have been intended by the legislature to be conferred on him that he could exercise them after lapse of say 50 years. In the order dated 29th February 1960 there is no indication that any such argument was raised before the Deputy Custodian-General, nor does it appear from the second order of 9th October 1961 that any such objection was pressed before him. If this matter had been pointedly brought to the notice of the Deputy Custodian-General, it may have been possible for him to give a decision in respect of it. The question whether the period after which an order is being revised u/s 27 is reasonable or not has to depend on certain facts which ought to have been raised and agitated before the Deputy Custodian-General. We are not consequently inclined to interfere on this question.

11. The last submission of Mr. Tuli is that the Deputy Custodian-General could not delegate his powers to the Additional Custodian in the matter of assessing the price of the land. There is no such bar contained in Section 27 of the Act which confers very wide and general powers and he can make such order as he thinks fit. At any rate. It is not possible to see how any prejudice will be caused to the petitioner by the Additional Custodian assessing the value of the property as he is expected to act in a fair and impartial manner. If the petitioner feels dissatisfied with his valuation on any substantial grounds, it will be still open to it to move the Deputy Custodian-General in that behalf.

12. In the result, this petition fails and it is dismissed, but in the circumstances the parties are left to bear their own costs.

Mehar Singh, J.

13. I agree.